APPELLATE CIVIL.

Before Mr. Justice Lentaigne, and Mr. Justice Carr.

1924

May 30.

MA NU

v.

MA GUN.*

Nomination of a beneficiary under a provident fund—Subscriber a Burmese Buddhist—Effect of the nomination and subsequent payment to nominee after death of subscriber.

Held, that the nomination of a person for payment by an association or a provident fund on the death of a subscriber, was a testamentary disposition and therefore invalid where the subscriber was a Burman Buddhist.

Held, also, that where the association or fund made payment to the nominee, the nominee held the money as a trustee for the heirs of the deceased subscriber.

Daw Khin and One v. *Mo Than Nyoon and one*, Civil Regular 441 of 1920 of the Chief Court of Lower Burma; *In re Williams*, *Williams* v. *Ball*, L.R. (1917) 1 Ch., 1; *Nana Tawker* v. *Bhawani Boyee*, 43 Mad., 728—followed.

Florina Marties v. *M. L. Pinto*, 33 Mad. L. T., 416—*distinguished.*

Dantra—for the Appellant.

Keith—for the Respondent.

CARR, J.—Maung Yaw was an employee of the Customs Department in Burma. He was a member of the Burma Customs Mutual Help Association, and as such paid a monthly subscription. This entitled his nominee, on his death, to receive the sum of Rs. 1,200 from the association. It was open to the member at any time to change his nominee. He could himself in certain circumstances cease to be a member of the association and obtain a refund of one half of the amount of subscriptions paid by him.

Maung Yaw's nominee was his sister, Ma Nu, the defendant-appellant. Maung Yaw died and the association paid the Rs. 1,200 to Ma Nu. Then the respondent Ma Gun, who is the widow and administratrix, of Maung Yaw, sued to recover the money from Ma Nu.

*Special Civil First Appeal No. 203 of 1923 against the decree of the Small Cause Court of Rangoon in Civil Regular No. 3676 of 1923.

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She obtained a decree in the Small Cause Court and Ma Nu now appeals. The only question for decision is whether Maung Yaw's nomination of Ma Nu amounted to a testamentary disposition. It is admitted that if it does, it is invalid, since Maung Yaw, as a Burman Buddhist, had no power to make a will. The money would in that case go to Maung Yaw's natural heir, that is to the plaintiff.

In *Daw Khin and one* v. *Ma Than Nyoon and one*, unpublished, Civil Regular No. 441 of 1920 of the Chief Court of Lower Burma—it was held that a gratuitous assignment of endowment life policy was a testamentary disposition and therefore invalid among Burman Buddhists. The learned Judge followed the decision in *Nana Tawker* v. *Bhawani Boyee* (1), which was a case of a provident fund very similar to the present case. It was held there that a nomination of a person to be paid by the fund on the death of the subscriber was a testamentary disposition and therefore was valid only if duly attested by two witnesses.

In *Florina Marties* v. *M. L. Pinto* (2) a somewhat similar fund was in question. The subscriber assigned her rights to her nominee who thereafter paid the subscriptions falling due. Later she wished to change her nomination, but the fund would not allow this as she could not produce the nomination certificate, as required by the rules, because the certificate had been made over to the nominee. Then she made a will leaving this money to the plaintiff, who on her death obtained probate and then sued the nominee and the fund. It was held that the nominee was entitled to the money. That case is distinguishable from *Tawker's* case and from the present one. It was clear that the subscriber had by

(1) (1920) 43 Madras, 728. (2) (1917) 33 Madras L.J., 476.

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contract parted with her rights in the fund to the nominee and therefore had nothing left which she could bequeath.

In *In re Williams, Williams* v. *Ball* (3), it was held that an assignment of a life policy, conditional on the assignee surviving after the death of the assignor was either a revocable mandate or authority which was revoked by the death of the assignor, or, if taking effect on the death, a testamentary document not duly executed.

I think it must be held in this case that the nomination of the appellant was a testamentary disposition. Under it nothing vested in the appellant. It was open to the nominator to change his nomination at any time or to nullify it by retiring from the association and withdrawing half of his subscriptions. It was only on his death while still a member that anything became payable to the appellant. Had the association been wound up during his lifetime he and not his nominee would have been entitled to share in the assets.

It must therefore be held that the nomination did not more than constitute the appellant a trustee for the heirs of Maung Yaw in respect of this money.

I would therefore dismiss this appeal with costs.

LENTAIGNE, J.—I concur.

(3) (1917), L.R. 1 Chancery, 1.